

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 11, 2005**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on March 11, 2005. The meeting was tape-recorded and the tape is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commission Member Mike Joyner were present at the meeting. Commission Member Ricky Wright was unable to attend.

MINUTES OF FEBRUARY 11, 2005 MEETING

Commissioner Joyner made a motion to waive the reading of the minutes from the February 11, 2005, meeting into the record. Seconded by Chairman Fox. So ordered. Commissioner Joyner made a motion to approve the minutes from the February 11, 2005, meeting. Seconded by Chairman Fox. So ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Joyner if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Joyner replied that he found no conflicts of interest. Chairman Fox recused himself from ruling on the following cases:

Hearing Case #11 – Olive or Twist
Hearing Case #14 – T Bonz Tavern
Hearing Case #16 – Wilco 391
First Offense Case #20 – Sonny's at the Beach

Chairman Fox requested that these cases be continued to the April 8, 2005 meeting.

I. HEARING CASES- 55 Listed

Hearing Case #1 – America's Grill – Assistant Counsel K. Renee Cowick addressed the Commission concerning this contested case. She stated that the case dealt with discrepancies between reports filed by the Permittee to the ABC Commission concerning wholesale alcohol purchases and reports submitted by the wholesalers. The permittee was duly notified of the December 8, 2004 hearing for this case in the Office of Administrative Hearings, but did not appear at the hearing. The permittee's attorney filed a motion for a rehearing, which was denied by Administrative Law Judge Beryl E. Wade on February 2, 2005. Ms. Cowick recommended that the ABC Commission approve Judge Wade's decision of 90 days suspension of permits and payment of a fine of \$1,000.00. Chairman Fox made a motion to approve Judge Wade's decision. Seconded by Commissioner Joyner. So ordered.

Chief Deputy Counsel Fred A. Gregory stated that several permittees were present to speak to the ABC Commission:

Hearing Case #13 – Trade Mart 50 – Mr. Walter Williams was present to speak to the Commission regarding a charge of selling alcoholic beverages to an intoxicated person on May 23, 2004. He stated that on the day of the violation, his employee, Thelma Mae Davis, had observed a car parked in the parking lot of the business for several hours, and called the police department to investigate the matter. In the meantime, a customer entered the store and purchased an alcoholic beverage from Ms. Davis. The customer was later stopped by a police officer, who determined that the customer was intoxicated. Mr. Williams stated that he had reviewed the surveillance tape of the transaction, and did not believe the customer exhibited any indication that he was intoxicated. Mr. Williams stated that he himself would have sold the alcoholic beverage to the customer.

Commissioner Joyner asked Mr. Gregory if there is a standard outlined by ABC rules and regulations that could be used by an employee to judge intoxication. Mr. Gregory replied that the statutes state that an employee cannot knowingly sell alcohol to an intoxicated person, and that the methods for determining intoxication should be outlined by individual business' training programs. Mr. Williams stated that Trade Mart conducts regular alcohol sales training sessions for their employees.

Chairman Fox asked how long Ms. Davis had been employed, and Mr. Williams replied that she had been employed for two years. Chairman Fox then asked if she still worked at Trade Mart 50, and Mr. Williams replied that she had quit of her own accord. Mr. Williams further stated that Ms. Davis had been found not guilty in the criminal proceedings concerning this violation.

Mr. Williams then played the videotape of the transaction for the Commission.

After the presentation, Commissioner Joyner asked Mr. Williams who Ms. Davis was speaking to in the video, since she appeared to be looking to the left of the customer. Ms. Cowick replied that Ms. Davis was speaking to the police officer, who had arrived to investigate the car parked in the parking lot. At no time did the officer confront the customer in the store.

Chairman Fox asked Mr. Williams how many stores he operated, and Mr. Williams replied that he currently ran 101 stores. Chairman Fox asked what kind of record Trade Mart has with the ABC Commission, and Mr. Gregory replied that they have a fairly good record.

Commissioner Joyner made a motion to dismiss the charge. Chairman Fox agreed, with the added stipulation that Mr. Williams host an ABC training class. So ordered.

Hearing Case #10 – Mitchell's Catering – Bill Allen was present to speak to the Commission regarding a charge of failing to purchase unfortified wine only from a licensed wholesaler on December 7, 2004. Mr. Allen stated that on the day of the violation, his business underwent an routine inspection by ALE authorities, and that he was attending an event. During the inspection, the agent examined petty cash receipts and determined that four of the receipts were in violation of ABC statutes. Mr. Allen stated that he believed three of the receipts were cited erroneously. One receipt cited the purchase of "Gruyere Reserve", which Mr. Allen explained was a cheese product. Two other receipts reflected purchases made by an employee of the

business. This employee bought food products for the business in addition to groceries for his own personal consumption, including wine, which he was not reimbursed for. Mr. Allen recognized that the last receipt, reflecting a purchase of wine from a grocery store, was a genuine violation, and explained that the wine was only used in preparation of an order of beef bourguignon, and was not re-sold to customers as wine. Mr. Allen asked the Commission to reconsider his fine, and possibly issue a warning to his business in lieu of a penalty.

Chairman Fox asked Mr. Allen how often his business was inspected. Mr. Allen replied that ALE inspects the business every two to three months, and that the business was inspected again in February.

Chairman Fox made a motion to issue a written warning in this case. Seconded by Commissioner Joyner. So ordered.

First Offense Case #10 – Flying J Travel Plaza – Bob McDonald was present to speak to the Commission regarding two charges of underage sales on November 6, 2004. He stated that Flying J has an extensive alcohol and tobacco training program for all employees and that new hires must complete the program before being allowed to work. In light of his business' training policies, he wished to have his penalty reduced.

Upon reviewing the violation, Chairman Fox stated that he did not think the penalty could be mitigated, and made a motion to uphold the penalty of five days suspension, suspended upon payment of a fine of \$500.00. Seconded by Commissioner Joyner. So ordered.

First Offense Case #38 – Wilco 308 – Attorney John Ormand, III was present to speak to the commission regarding a charge of underage sale on November 6, 2004. Mr. Ormand stated that the clerk, who had been employed at the location for seven months, keyed in the birth date on the customer's driver's license four times, and each time the register declined the transaction. The clerk then asked the customer if she was 21 years old, and she did not answer.

Mr. Ormand stated that all employees of WilcoHess must sign the store's alcohol and tobacco sales policies and undergo sales training. Each month, employees of WilcoHess must sign a form stating that they are familiar with the store's alcohol and tobacco sales policies before receiving their paycheck. In light of these efforts and the birth date entry system on the cash registers, Mr. Ormand felt that WilcoHess was making a good faith effort to prevent sales of alcoholic beverages to underage customers, and requested that the Commission reduce the penalty of ten days suspension or payment of a \$1,000.00 fine.

Chairman Fox asked Assistant Counsel Timothy Morse what kind of record WilcoHess has with the ABC Commission. Mr. Morse replied that they have a fair record. Chairman Fox then asked Mr. Ormand what kind of training WilcoHess gives their employees. Mr. Ormand replied that the manager instructs the clerks on all the alcohol and tobacco procedures, then observes the clerk make sales to ensure they understand the policies. Policy reminders are given every month. In some districts, the management conducts their own campaigns by sending in individuals to make purchases and ensure that the clerks are adhering to the tobacco and alcohol sales policies. In addition, most stores offer a training course via computer CD-ROM, and WilcoHess hopes to offer this training to all their stores in the near future.

Chairman Fox suggested that the penalty be amended to reflect a \$500.00 fine on the condition that WilcoHess contact Danny Sellers at the ABC Commission regarding training policies. Seconded by Commissioner Joyner. So ordered.

Chairman Fox made a motion to ratify the balance of the Offers in Compromise for the hearing cases with the exception of Hearing Cases #11 – Olive or Twist, #14 – T Bonz Tavern and #16 – Wilco 391. Seconded by Commissioner Joyner. So ordered.

II. FIRST OFFENSE CASES – 46 listed

The following is a list of first offense violation cases, in which Final Agency Decisions were signed by the Chairman on March 11, 2005, pursuant to the Commission's authorizing resolution dated November 8, 2002:

Bapa Mart - 1414 East Main Street, Albemarle, NC 28002
Bi Lo 279 - 9108 Lawyers Road, Charlotte, NC 28227
Big Daddy's Mini Mart - 640 East Court Street, Marion, NC 28752
Bo's Food Store 1 - 1002 East 5th Street, Lumberton, NC 28358
Bostian Corner - 2023 West C Street, Kannapolis, NC 28081
Chief's Pick A Pack - 125 Linville Road, Kernersville, NC 27284
Ducks Bar and Grill - 1207 Gum Branch Road, Jacksonville, NC 28540
Eckerd Drugs 3563 - 9107 Lawyers Road, Charlotte, NC 28227
Eckerd Drugs 8112 - 4305 NC Hwy 49, Harrisburg, NC 28075
Flying J Travel Plaza - 1043 Jimmy Kerr Rd., Haw River, NC 27258
Hasty Mart 31 - 7851 Hwy 70 West, LaGrange, NC 28551
King's Quick Stop 2 - 750 Hwy 49 South, Concord, NC 28025
Kroger R-306 - 4111-101 New Bern Avenue, Raleigh, NC 27610
L and M Convenience Mart - 1309 Lake View Road, Fairmont, NC 28340
Las Cazuelas Mexican Restaurant - 502 West Safe Street, Black Mountain, NC 28711
Oregon Inlet Fishing Center - Hwy 12, Nags Head, NC 27959
Phillips 66 Kicks 6329 - 2400 Spring Forest, Raleigh, NC 27609
Pit Stop 101 - 9100 Lawyers Road, Charlotte, NC 28227
Scotchman Store 1 - 15515 Hwy 53 East, Maple Hill, NC 28454
Sonny's at the Beach - 105 Ocean Front, Carolina Beach, NC 28428
South Holden B P - 3227 South Holden Road, Greensboro, NC 27407
Sun Do Kwik Shop 41 - Hwy 41 South, Lumberton, NC 28358
Times Turn Around 43 - 7008 W T Harris Boulevard, Charlotte, NC 28262
Trade Mart 86 - 1703 West 5th Street, Lumberton, NC 28538
World Market - 3510 High Point Road, Greensboro, NC 27407
Broadway Kwik Stop - 873 South Broadway, Forest City, NC 28043
Dobbs Shell Express - 2720 West 5th Street, Lumberton, NC 28358
Enochville Food Center - 915 North Enochville Avenue, China Grove, NC 28023
Exxon 40957 - 4401 Park Road, Charlotte, NC 28209
Kims Grocery - 4051 Randleman Road, Greensboro, NC 27406
Milano Pizza and Subs - 3919 New Bern Avenue, Raleigh, NC 27610
Pantry Shop 3 - 3262 South Holden Road, Greensboro, NC 27407
Paddy Doolins Irish Pub - 114 East Main Street, Forest City, NC 28043
Reems Creek Food Market 2 - 444 Reems Creek Road, Weaverville, NC 28787

Radisson Hotel - 135 South Main Street, High Point, NC 27260
Stop One - 109 Martin Luther King Drive, LaGrange, NC 28551
Taqueria La Villita - 1560-A Freeway Drive, Reidsville, NC 27320
Wilco 308 - 907 Knox Road, McLeansville, NC 27301
Danbury General Store - 201 Main Street, Danbury NC 27016
Pantry 112 - 110 West Haggard Street, Elon College, NC 27244
Food Lion 1259 - 3685 New Bern Avenue, Raleigh, NC 27610
Food Lion 251 - 2000 Hwy 52 North, Albemarle, NC 28001
Food Lion 1371 - 8118 Blair Road, Charlotte, NC 28227
Food Lion 718 - 761 Linwood Avenue, Gastonia, NC 28052
Food Lion 56 - 2320 New Hope Road, Gastonia, NC 28054
Food Lion 1376 - 5831 South Boulevard, Charlotte, NC 28210

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases with the exception of First Offense Case #20 – Sonny’s at the Beach. Seconded by Commissioner Joyner. So ordered.

III. OTHER BUSINESS

Split-Case Billing – Chairman Fox requested that Administrator Mike Herring and Administrator Doyle Alley determine other control states’ policies regarding split-case billing.

Hearing Case #44-2 – Krankie’s – Assistant Counsel LoRita K. Pinnix addressed the Commission regarding this case. She stated that the case had appeared before the Commission at the February 11, 2005 meeting, but the permittee had requested that the effective dates on the Final Agency Decision be amended to reflect the March meeting’s dates. Chairman Fox made a motion to change the Final Agency Decision to reflect the March meeting’s dates. Seconded by Commissioner Joyner. So ordered.

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Jason Hall, Legal Division